IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 281 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

MAHENDRA MILLS LTD

Appearance:

MR MANISH R BHATT for the petitioner

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 07/03/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

At the instance of Revenue, the Income Tax Appellate Tribunal, Ahmedabad Bench "C" has referred following question of law for the opinion of this Court relating to Assessment Year 1975-76:-

"Whether, on the facts and in law, the assessee possess any option to claim depreciation or not and merely because the assessee did not file the necessary particulars in the return, the ITO did not have jurisdiction to grant the depreciation allowance as per law?"

We have heard the learned Counsel for the Revenue. Though served, no one appears on behalf of the respondent. The learned Counsel for the Revenue fairly states at the bar that the controversy raised in the present reference is concluded by the decision of the Supreme Court rendered in the case of the very assessee relating to Assessment Year 1974-75, which is reported in (2000) 243 ITR 56. In the said decision, the Supreme Court has ruled that the provision for claim of depreciation is certainly for the benefit of the assessee and if he does not wish to avail of that benefit for some reason, the benefit cannot be forced upon him. What is emphasised therein is that it is for the assessee to see if the claim of depreciation is to his advantage. In view of the principle laid down by the Supreme Court in the case of this very assessee, we are of the opinion that the assessee possesses an option to claim depreciation and merely because the assessee did not file necessary particulars in the return, the ITO does not have jurisdiction to grant depreciation allowance. The reference is therefore answered in the affirmative i.e. in favour of the assessee and against the Revenue. The reference stands disposed of accordingly with no order as to costs.

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